

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

EDWARD R. NEWSOME,

Petitioner,

v.

WILLIAM STEPHENS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

§
§
§
§
§
§
§
§
§
§

2:10-CV-0242

**REPORT AND RECOMMENDATION TO DENY PETITIONER'S
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

On December 16, 2010, this Court entered an Order dismissing petitioner's pleading that had been designated as a federal petition for a writ of habeas corpus. This Court also sanctioned petitioner, barring him from filing any further habeas action unless he first obtained permission from a judicial officer. After Judgment was entered, an interlocutory appeal filed prior to judgment was dismissed because the Court's Order to Show Cause appealed from was not a final or otherwise appealable order. A timely appeal of the Judgment in this case was subsequently dismissed for want of prosecution.

In July 2015, approximately 4 ½ years after the entry of Judgment in this case, petitioner again attempted to appeal the 2010 Order and Judgment entered in this case, but

the appeal was dismissed for lack of a timely notice of appeal. On October 27, 2015, petitioner filed yet another notice of appeal. This latest notice of appeal appears to challenge the appellate court's dismissal of his previous appeal.¹ The Court of Appeals for the Fifth Circuit construed this notice of appeal as a challenge to this Court's Judgment and forwarded the notice of appeal to this Court for filing.

If is fact petitioner is appealing this Court's Judgment, the appeal is frivolous and in bad faith. Petitioner previously appealed this Court's 2010 Judgment and such appeal was dismissed by the Fifth Circuit Court of Appeals as untimely. If petitioner is attempting to challenge the Fifth Circuit's previous ruling, this Court is without jurisdiction. Moreover, petitioner has not provided this Court with a current *In Forma Pauperis* Data Sheet from the institution in which he is confined reflecting the amount of funds he has available or funds to which he has had access to pay the appellate filing fee. Petitioner's application to proceed *in forma pauperis* should be denied.

RECOMMENDATION

It is the recommendation of the undersigned United States Magistrate Judge to the United States District Judge that petitioner's application to proceed *in forma pauperis* on appeal be DENIED.

¹Petitioner's pleadings are very difficult to decipher, but as best the Court can determine, petitioner appears to be objecting to a ruling by the United State Court of Appeals for the Fifth Circuit.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 2nd day of November 2015.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).